

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

FILED  
U.S. DISTRICT COURT  
EASTERN DISTRICT OF LA

IN RE: EDUCATIONAL TESTING  
SERVICE PRAXIS  
PRINCIPLES OF LEARNING  
AND TEACHING: GRADES  
7-12 LITIGATION

2005 JUN 24 AM 11:24  
MDL NO: 1643

LORETTA G. WHYTE  
SECTION: R(5)  
CLERK

JUDGE VANCE  
MAG. JUDGE CHASEZ

THIS DOCUMENT RELATES TO ALL CASES

**PRETRIAL ORDER # 5**

**(Class Certification Discovery)**

Pretrial Order #2 is modified such that the Plaintiffs shall file their class certification motion within 150 days from the date of the filing of Defendant's answer to the consolidated complaint. This Order establishes a schedule for the conduct of discovery related to the issue of class certification. Accordingly, it is ORDERED that:

**1. Discovery by Plaintiffs.**

Commencing with the filing of Defendant's answer to the consolidated complaint, Plaintiffs shall be entitled to propound additional written discovery with respect to class certification issues. Objections and Responses to written discovery shall be due 30 days after service of the written discovery. Plaintiffs may serve interrogatories to the extent that Plaintiffs have not used all of the 25 interrogatories allotted for the action pursuant to Federal Rule of Civil Procedure 33(a). Further, commencing 31 days after the filing of Defendant's answer to the consolidated complaint, Plaintiffs shall be entitled to take depositions. Plaintiffs shall be entitled to take no more than 16 depositions. Depositions shall take place at a location near the residence of the deponent, or at any other location agreed upon by the parties and the deponent. Pursuant to Federal Rule of Civil Procedure 30(d)(2), each deposition shall be limited to one day of seven

Fee \_\_\_\_\_  
Process \_\_\_\_\_  
☒ Dkt'd \_\_\_\_\_  
Clerk/Dep \_\_\_\_\_  
Doc. No. \_\_\_\_\_

hours. Deposition of ETS's Rule 30(b)(6) witness shall be limited to two days, except based upon a good cause showing.

**2. Plaintiffs' Designation of Fact Witnesses.**

Plaintiffs shall make an initial designation of known fact witnesses whose testimony they may offer at the class certification hearing by 75 days after the filing of Defendant's answer to the consolidated complaint and shall supplement such designation, if necessary, at the time the Motion to Certify Class Action is filed.

**3. Discovery by Defendant ETS.**

Commencing with the filing of Defendant's answer to the consolidated complaint, Defendants shall be entitled to propound additional written discovery with respect to class certification issues. Objections and Responses to written discovery shall be due 30 days after service of the written discovery. Defendant may serve interrogatories to the extent that Defendant has not used all of the 25 interrogatories allotted for the action pursuant to Federal Rule of Civil Procedure 33(a). Further, commencing 31 days after the filing of Defendant's answer to the consolidated complaint, Defendant shall be entitled to take depositions. Defendant shall be entitled to take up to 25 depositions. Included within those 25 depositions, Defendant shall be entitled to take up to five depositions of putative class members who are not named as a plaintiff in any complaint filed in these proceedings. Depositions shall take place at a location near the residence of the deponent, or at any other location agreed upon by the parties and the deponent. Pursuant to Federal Rule of Civil Procedure 30(d)(2), each deposition shall be limited to one day of seven hours.

**4. Defendant's Designation of Fact Witnesses.**

Defendant shall make an initial designation of known fact witnesses whose testimony they may offer at the class certification hearing by 105 days after the filing of Defendant's

answer to the consolidated complaint and shall supplement such listing, if necessary, at the time the Opposition to the Motion to Certify Class Action is filed.

**5. Disclosure/Discovery of Plaintiffs' Experts.**

Plaintiffs shall furnish to Defendant expert reports with respect to class certification issues in accordance with Fed. R. Civ. P. 26(a)(2)(B) and dates of availability of their experts for depositions by 90 days after the filing of Defendant's answer to the consolidated complaint.

Depositions of each expert shall be limited to two days, except based upon a good cause showing.

**6. Disclosure/Discovery of Defendant's Experts.**

Defendant shall furnish to Plaintiffs expert reports with respect to class certification issues in accordance with Fed. R. Civ. P. 26(a)(2)(B) and dates of availability of their experts for depositions by 135 days after the filing of Defendant's answer to the consolidated complaint.

Depositions of each expert shall be limited to two days, except based upon a good cause showing.

**7. Class Action Discovery Deadline**

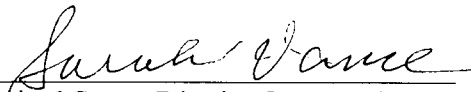
The parties shall complete the depositions of all fact and expert witnesses by 150 days after the filing of Defendant's answer to the consolidated complaint. If additional fact witnesses are disclosed by either party, such disclosure shall be made in sufficient time prior to the class certification hearing so that a reasonable opportunity to take discovery is provided to the other side, without prejudice to any party.

**8. Trial Plan**

Plaintiffs shall submit a proposed Trial Plan and outline for all class-wide relief at the time the Motion for Class Certification is filed. Defendants shall submit a Response to the proposed Trial Plan at the time the Opposition to the Motion for Class Certification is filed.

SO ORDERED.

New Orleans, Louisiana, this 24<sup>th</sup> day of June, 2005.

  
United States District Court Judge

**BARRIOS KINGS DORF & CASTEIX, L.L.P.**  
ATTORNEYS AT LAW

DAWN M. BARRIOS  
BRUCE S. KINGS DORF  
BARBARA TREUTING CASTEIX  
  
WRITER'S DIRECT DIAL NO.

ONE SHELL SQUARE  
701 POYDRAS STREET, SUITE 3650  
NEW ORLEANS, LA 70139-3650  
TELEPHONE (504) 524-3300  
FACSIMILE (504) 524-3313

June 16, 2005

**VIA HAND DELIVERY**

The Honorable Judge Sarah S. Vance  
United States District Court  
Eastern District of Louisiana  
500 Camp Street, Room C255  
New Orleans, LA 70130

Re: MDL-1643 In Re: Educational Testing  
Service PLT 9-12 Test Scoring Litigation  
Our File No. 499.0

Dear Judge Vance:

Counsel for both Plaintiffs and Defendant submit the final Pretrial Order on Class Certification Discovery for the Court's consideration, incorporating the rulings of Pretrial Order #4.

Sincerely,

  
Dawn M. Barrios

DMB/lwv

Enclosure: Pretrial Order on Class Certification Discovery

cc w/encl: Richard Arsenault, Esq., Plaintiffs' Liaison Counsel  
Stephen Hut, Esq., Defendant's Liaison Counsel  
Keith Pyburn, Esq.

H:\ETS\MDL1643\Ltrs\HonSVanceLtr\_6.15.05.wpd

